

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 943 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MAHENDRA VARMA JUGAN MAHANTO

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 943 of 2002
MR RAJESH M AGRAWAL for Petitioner No. 1-2
MR IM PANDYA, APP for Respondent No. 1
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CORAM : MR.JUSTICE A.L.DAVE
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 17/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. Appeal admitted. Ld. APP Mr. Pandya waives service of notice on behalf of respondent. Having regard to the peculiar facts of the case, by consent of parties the appeal is taken up for final hearing.

2. Appellants convicts came to be tried by the Additional Sessions Court (Fast Track Court No.2) Bhavnagar for offences punishable under Sections 8 and 20-B of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') read with section 29 of the NDPS Act. They came to be convicted by trial Court in light of the evidence adduced by the prosecution. The trial Court after recording conviction heard the accused persons on the question of quantum and after observing that a large quantity weighing 9 KGs and 300 Grams of Ganja was found from the possession of the accused persons, Ganja is a dangerous substance which may spoil lives of many persons, the accused persons deserve no sympathy and that even the law prescribe a minimum punishment of imprisonment for 10 years and a fine of Rs.1,00,000/-, he sentenced the appellants to undergo rigorous imprisonment (RI) for a period of 10 years and to pay fine of Rs.1,00,000/-, in default to undergo further RI for a period of six months. The judgment was rendered on 24th October, 2002.

3. Learned advocate Mr. Agrawal has submitted that the amended NDPS Act came into force from 2nd October, 2001 and by virtue of the provisions contained in section 41 of the amending Act the new provisions would be applicable to all pending cases. Mr. Agrawal submitted that the quantity of Ganja allegedly found from the possession of the appellants is larger than small quantity, but smaller than commercial quantity and in that eventuality provisions contained in Section 20 (a) (ii) (B) would be applicable which prescribes punishment for a term which may extent to 10 years and fine which may extent to Rs.1 lac and not minimum punishment of 10 years and fine of Rs.1 lac. Mr. Agrawal, therefore, submitted that the accused are deprived of an active consideration by the trial Court of considering the question of quantum of punishment in light of these provisions because the trial Court proceeded on a premise that it is inflicting the minimum punishment prescribed. Mr. Agrawal, therefore, submitted that the trial Court has committed an error in proceeding under the old Act.

4. Ld. APP Mr. Pandya has opposed this appeal.

5. We have given consideration to the provisions contained in Section 41 of the amending Act as well as the amended provisions and in our view the learned Judge was not justified in imposing the minimum punishment as prescribed under the unamended NDPS Act, NDPS Act as it existed before coming into operation of amended Act on 2nd October, 2001. We are of the opinion that the interest of justice would be better served if the matter is remanded to the trial Court for reconsidering the question of quantum of punishment to be imposed on the appellants after giving due audience to the parties.

6. The appeal, therefore, must succeed and it succeeds. The sentence imposed by the trial Court is set aside. We may hasten to add that we make no observation so far as conviction part is concerned, as learned advocate for the appellants has at this stage not pressed the appeal on merits. The matter is remanded to the trial Court with a direction to consider aspect of quantum of punishment in light of the amended provisions of the NDPS Act. It is also clarified that after the trial Court decides and imposes the punishment, it would be open for the appellants to challenge the legality of the judgment on merits including the conviction before the appropriate forum. The matter is remanded only for a limited purpose of reconsidering the question of quantum of punishment after hearing parties. The trial Court shall conclude and decide the question of punishment as early as possible. Appeal stands allowed accordingly.

[A. L. DAVE, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.